

**MEMORANDUM OF INCORPORATION**  
**OF**  
**ZWARTKLOOF PRIVATE GAME RESERVE HOME OWNERS**  
**ASSOCIATION NPC**

**REGISTRATION NUMBER: 2005/027184/08**

**REGISTRATION DATE: 16 APRIL 2008**

***[Being a Non-Profit Company with not less than 5 (Five) Directors and not more than 9 (Nine) Directors]***

**As required in terms of**  
**THE COMPANIES ACT, ACT NO. 71 OF 2008**  
**(AS AMENDED)**

***THIS MEMORANDUM OF INCORPORATION (MOI), CONSIDERED, DISCUSSED AND APPROVED BY SPECIAL RESOLUTION AT AN ANNUAL GENERAL MEETING DATED 13 OCTOBER 2018, REPLACES AND SUPERSEDES THE ZWARTKLOOF PRIVATE GAME RESERVE HOME OWNERS ASSOCIATION ARTICLES OF ASSOCIATION DATED 16 APRIL 2008, AS AMENDED.***

*Amendments, as per Revision 03A, considered, discussed and approved, by Special Resolution 2, at an Annual General Meeting dated 19 October 2019.*

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1. **INTERPRETATION AND DEFINITIONS:**

1.1 In this Memorandum of Incorporation (MOI), unless the context clearly indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings: –

1.1.1 **"Act"** means the Companies Act, No. 71 of 2008, as amended from time to time;

1.1.2 **"Alienate"** means the transfer of any right or interest whatsoever in nature in respect of any Stand, Erven or Portion, Property and/or the Land, part thereof or share therein howsoever arising and whether voluntary or involuntary and includes by way of sale, exchange, donation, deed, intestacy, will, cession, assignment, court order of insolvency, irrespective of whether such alienation is subject to a suspensive or resolute condition and alienating has a corresponding meaning;

1.1.3 **"Article"** means each separately numbered paragraph of this MOI;

1.1.4 **"Association"** means the Zwartkloof Private Game Reserve (ZPGR) Home Owners Association (HOA) incorporated under Section 21 of the Companies Act, No 71 of 2008;

1.1.5 **"Board"** means the board of Directors from time-to-time of the Association;

1.1.6 **"Business Day"** means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa;

1.1.7 **"Chairman"** means the Chairman of the Board elected in terms of Article 20.2;

1.1.8 **"Commission"** means the Companies and Intellectual Property Commission (CIPC) established by Section 185 of the Act;

1.1.9 **"Code/s"** means any governance and/or regulatory and/or guidance instrument, document and/or mechanism adapted by the Association to govern, direct or guide any conduct and/or practice on the Development and/or Reserve. This may include, but is not limited to Code/s of Conduct (also referred to as a **"CoC"**), including but not limited to Rules and Regulations and Code/s of Practice (also referred to as a **"CoP"**), which instrument, document and/or mechanism encompasses *inter alia* standards, requirements, specifications, controls, procedures and alike;

1.1.10 **"Common areas"** means those designated areas which may be accessed, traversed and/or utilized by persons entering and/or on the Reserve, which right to access, traverse and/or use shall be granted by means of a Servitude and/or any other applicable legal documentation;

1.1.11 **"Company"** means **Zwartkloof Private Game Reserve Home Owners Association NPC**, with **Registration Number: 2005/027184/08**, (hereinafter referred to as the **"Association"**);

- 1.1.12 **"Conditions of Establishment"** means the Statement of Conditions under which the land development (Zwartkloof Private Game Reserve) has been approved by the Limpopo Development Tribunal in terms of the Development Facilitation Act, Act No. 67 of 1995;
- 1.1.13 **"Deeds Office"** means the office of the Registrar of Deeds in which jurisdiction Zwartkloof Private Game Reserve, is registered;
- 1.1.14 **"Deeds Registration Act"** means the Deeds Registration Act 47 of 1937;
- 1.1.15 **"Development"** means the Land Development named **Zwartkloof Private Game Reserve (ZPGR) which was** established in accordance with the Conditions of Establishment and related documentation ) and which Development is situated on the Remainder of the Farm Zwartkloof No. 707 K.R (Bela-Bela Municipality) in the Limpopo Province;
- 1.1.16 **"Developer"** means **Zwartkloof Development (Pty) Ltd, with Registration Number: 1968/011734/07.** For the purposes of this Memorandum of incorporation (MOI) any reference to the Developer is only in his capacity as Developer, being the owner of Land and Unsold Stands;
- 1.1.17 **"Director"** means a member of the Board as contemplated in Section 66 of the Act, and includes any person occupying the position of a Director, by whatever name designated;
- 1.1.18 **"Electronic Communication"** means a communication by means of a data message consisting of data generated, sent, received or stored by electronic means including electronic mail (electronic mail), facsimile; SMS and, where applicable, Skype or any other video conferencing communication available;
- 1.1.19 **"Encumbrance"** means any right of first refusal, purchase right, option or any other restriction of any kind on ownership, transfer, use, possession, receipt of income from or any other exercise of any attribute of ownership, including any mortgage, pledge, lien or other security interest;
- 1.1.20 **"Facilities"** means any facilities or amenities relating to entertainment, recreation or otherwise and of whatsoever nature erected or to be erected on the Land which includes, but is not limited to Swimming Pool(s), Tennis Court(s), Jungle Gym, Boma, Picnic Spot(s), Bird Hide(s), Administration/recreational Building(s), Manager's Residence(s) and Staff Housing and/or other Land Use Activities the use of which may be exclusive, reserved or conditional;
- 1.1.21 **"Financial year"** means the financial year of the Association which, unless otherwise approved and amended, shall run from the first day of **July** in any year to the last day of **June** in the subsequent year;

- 1.1.22 **"Improvements"** shall mean the development of and/or on Stand(s) and/or Portion(s) and/or Land which shall include, without limitation, site works, construction of a house, dwelling or any other structure and/or facility;
- 1.1.23 **"Income Tax Act"** means the Income Tax Act 58 of 1962, as amended from time to time;
- 1.1.24 **"Infrastructure" (also referred to as "Engineering Services")** means the roads, electrical distribution-, water reticulation-, communication- waste management systems and fences constructed or to be constructed on the Development.
- 1.1.25 **"Land"** means the open land being (and described as) Portions 124 (was 24), 125 ("the remainder thereof" to be registered as 178), 126 ("the remainder thereof" to be registered as 278) and the Remainder ("the remainder thereof" to be registered as 337) with such Common Areas,, Facilities, Servitudes, Infrastructure (registered or to be registered) and open spaces which may be utilized by all Members;
- 1.1.26 **"Levy Contribution"** means the levy contributions by Members, as determined from time to time, including special contributions and additional contributions by Members, as referred to in Article 11 hereof;
- 1.1.27 **"Local Authority"** means the Local Municipality in whose municipal boundaries Zwartkloof Private Game Reserve is situated;
- 1.1.28 **"Member"** means a member of the Association and reflected in the records of the Deeds Office as the registered owner of a Stand within and/or on Zwartkloof Private Game Reserve. Membership is limited to 1 (One) per registered Stand and/or Portion irrespective of the number of owners per Stand and/or Portion;
- 1.1.29 **"Members' Meeting"** means any Meeting of the Members and refers collectively to the Annual General Meeting and any Special General Meetings of the Association;
- 1.1.30 **"Memorandum of Agreement"** means the Contractual Agreement(s) entered into and between Zwartkloof Developments (Pty) Ltd and Zwartkloof Private Game Reserve Home Owners Association governing, *inter alia*, the rights and obligations of the respective Parties as applicable to the Development and/or Reserve;
- 1.1.31 **"MOI"** means this Memorandum of Incorporation together with annexures and references attached or referred to, which includes without limitation the Associations Code/s, Rules, Regulations, Procedures and amendments thereto from time-to-time;
- 1.1.32 **"Month"** means a calendar month;
- 1.1.33 **"Office"** means the registered office of the Association;
- 1.1.34 **"Owner" also referred to as "Purchaser"** means any person and/or entity who has legally acquired rights, regardless as to the nature therein relative to and which gives

rise or purports to give rise to an entitlement of ownership to a, Stand and/or Portion or share in any of such which forms part of Zwartkloof Private Game Reserve;

- 1.1.35 **"Portion"** means the Land and Stands as stipulated, defined and numbered as Portions on the General Plan of Phase 1 filed at the Registrar of Deeds, as well as any additional and/or supplementary General Plans to be filed in future at the Registrar of Deeds which relates to the Development situated on Remainder of the Farm Zwartkloof No. 707 K.R (Bela-Bela Municipality) in the Limpopo Province;
- 1.1.36 **"Profit"** includes revenue and capital profits;
- 1.1.37 **"Property"** means the Remainder of the farm Zwartkloof No. 707 K.R in the extent of approximately 2031 Hectares and/or any approved subdivision thereof on which the Development is situated. For the sake of clarity, it is noted that there are currently, in the absence of any other written agreement, 2 (two) groups holding ownership of Land and/or Stands and/or Portions on the Development namely:
- 1.1.37.1 The Developer, being the Owner of Stands/Portions 120, 121, 122, 123, Portions 124, 178, 278, and 337 and the unsold Stands in Phase 1.
- 1.1.37.2 The Individual Owners of Stands/Portions in Phase 1, which Owners are represented by the Zwartkloof Private Game Reserve Home Owners Association.
- 1.1.38 **"Regulations"** means the Regulations published in terms of the Act from time to time and any reference to a single Regulation shall be a reference to the corresponding Regulation in the Regulations;
- 1.1.39 **"Republic"** means the Republic of South Africa;
- 1.1.40 **"Reserve"** means a shortened reference to the Development named Zwartkloof Private Game Reserve;
- 1.1.41 **"Round Robin Resolution"** means a Resolution passed or to be passed, other than at Members' Meeting and/or Meeting of Directors, as contemplated and specified in Article 1.14 hereof;
- 1.1.42 **"Services"** means the provisions of Management-, Administration-, Engineering-, Financial-, Commercial-and Security Services as well as such other utilities and amenities as provided and/or may be provided to and/or are made available to the Members;
- 1.1.43 **"Solvency and Liquidity Test"** has the meaning attributed thereto in section 4 of the Act;
- 1.1.44 **"Stand"** means any full title Stand or Portion on the Property and/or Land on which has been or is to be erected any residential house or dwelling and which Stand is capable of registration in the Deeds Office. Find attached hereto a schedule of the Stands and Portions in respect of Phases 1 to 4, marked as Annexure 01;

- 1.1.45 "Unsold Stand" means any Stand which has not any way or by any means been transferred and registered by and/or from the Developer into the name of any third party
- 1.1.46 "**Subdivision**" means any prior approved subdivision of the Land.
- 1.1.47 "**Rules**" means the approved Zwartkloof Private Game Reserve Rules and Regulations, also referred to as the Code of Conduct. This includes the Zwartkloof Private Game Reserve Rules and regulations, Compulsory Building and Architectural Guidelines and Controls and any other applicable and/or approved Codes or Rules;
- 1.1.48 "**Voting right**" means 1 (one) vote per Membership. The voting rights attached to the Developer has been agreed between Zwartkloof Private Game Reserve Home Owners Association NPC and the Zwartkloof Development (Pty) Ltd (The Developer) as prescribed in the "**Memorandum of Agreement**" following approval by Special Resolution of Members at the Annual General Meeting dated 13 October 2018 and amendment as per Special Resolution of Members at the Annual General Meeting dated 19 October 2019. The voting right of the Developer to be the residual of number of Stands in Phase one (95), Phase two (52) and twenty-two in Phase three (namely 169 in total number) minus the Stands sold in Phases one, two and three **OR** the number of un-sold serviced and registered stands ready to be purchased and transferred, which-ever is the higher number;
- 1.1.49 "**Zwartkloof Private Game Reserve**" means the registered name of the Development situated on the Property;
- 1.2 In this MOI, unless the context clearly indicates otherwise: –
- 1.2.1 Words and expressions defined in the Act and which are not defined herein have the meanings given and/or assigned to them in the Act;
- 1.2.2 Any reference to a section of the Act by number refers to the corresponding section of the Act notwithstanding the renumbering of such section after the date on which this MOI is registered;
- 1.2.3 In any instance where there is a conflict between a provision (be it expressed, implied or tacit) of this MOI and: –
- 1.2.3.1 An alterable or elective provision of the Act, the provision of this MOI shall prevail to the extent of the conflict; and
- 1.2.3.2 An unalterable or non-elective provision of the Act, the unalterable or non-elective provision of the Act shall prevail to the extent of the conflict, unless the MOI imposes on the Association a higher standard, greater restriction, longer period of time or similarly more onerous requirement, in which event the relevant provision of this MOI shall prevail to the extent of the conflict.
- 1.2.4 Article headings are for convenience only and are not to be use in interpretation.

- 1.2.5 An expression which denotes: –
- 1.2.5.1 A gender includes the other genders;
  - 1.2.5.2 A natural person includes a juristic person and *vice versa*; and
  - 1.2.5.3 The singular includes the plural and *vice versa*.
- 1.2.6 If the due date for performance of any obligation in terms of this MOI is a day which is not a Business Day then (unless otherwise stipulated), the due date for performance of the relevant obligation shall be the immediate succeeding Business Day.
- 1.2.7 Any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in a manner and form permitted in terms of the Act and/or the Regulations.
- 1.3 Any reference in this MOI to: –
- 1.3.1 "**days**" shall be construed as calendar days unless qualified by the word;
  - 1.3.2 "**business day**" in which case Article 1.5 shall apply, and when this MOI provides for the happening of one event and another, the number of days must be calculated by:
    - 1.3.2.1 Excluding the day on which the first such event occurs; and
    - 1.3.2.2 Including the day on or by which the second event is to occur; and
    - 1.3.2.3 Excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in Articles 1.3.1.1 and 1.3.1.2, respectively; and
    - 1.3.2.4 If that day is not a Business Day, then same shall be the first succeeding Business Day;
  - 1.3.3 "**law**" means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law and a reference to any statutory enactment shall be construed as a reference to that enactment as amended or substituted from time to time;
  - 1.3.4 "**writing**" means legible writing and in English and includes printing, typewriting, lithography or any other mechanical process, as well as any electronic communication in a manner and a form permitted in terms of the Act and/or the Regulations.
- 1.4 The words "**include**" and "**including**" mean "**include without limitation**" and "**including without limitation**". The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.



- 1.5 Unless otherwise provided for in this MOI or the Act:
- 1.5.1 Defined terms appearing herein in title case shall be given their meaning as defined, while the same terms appearing in lower case shall (except where defined in the Act) be interpreted in accordance with the plain English meaning;
- 1.5.2 Any words and expressions defined in any Article shall, unless the application of such word or expression is specifically limited to that Article, bear the meaning assigned to such word;
- 1.6 Where a particular number of Business Days is provided for between the happening of one event and another, the number of days must be calculated by excluding the day on which the first event occurs and including the day on which or by which the second event is to occur.
- 1.7 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 1.8 Any reference herein to "**this MOI**" shall be construed as a reference to this MOI as amended from time-to-time.
- 1.9 Whenever any person is required to act "as an expert and not as an arbitrator" in terms of this MOI, then:-
- 1.9.1 Such expert may be a natural person or, as far as is practical, a firm or organisation; and
- 1.9.2 The determination of the expert shall (in the absence of manifest error) be final and binding; and
- 1.9.3 Subject to any express provision to the contrary, the expert shall determine the liability for his or its charges, which shall be paid accordingly; and
- 1.9.4 The expert shall be entitled to determine such methods and processes as he or it may, in his or its sole discretion, deem appropriate in the circumstances provided that the expert may not adopt any process which is manifestly biased, unfair or unreasonable; and
- 1.9.5 The expert shall consult with the relevant parties (provided that the extent of the expert's consultation shall be in his or its sole discretion) prior to rendering a determination; and
- 1.9.6 Having regard to the sensitivity of any confidential information, the expert shall be entitled to take advice from any person considered by him or it to have expert knowledge with reference to the matter in question.
- 1.10 Any Schedules attached to this MOI form part of this MOI.
- 1.11 The standard form of memorandum of incorporation for a Non-Profit Company with Members contained in Annexure 1 of the Regulations shall not apply to the Association.

- 1.12 This MOI is in a form unique to the Association, as contemplated in Section 13(1)(a)(ii) of the Act.
- 1.13 Where any provision of this MOI provides that a document, record or statement (other than a notice contemplated in Section 6 (10) of the Act) may be published on the Association's website, a notice of availability of that document, record or statement, summarising its content and satisfying any prescribed requirements, in accordance with Regulation 6 of the Regulations, shall be delivered to each intended recipient of the document, record or statement, together with instructions for receiving the complete document, record or statement.
- 1.14 "**Round Robin Resolution**" means a resolution passed, or which is to be passed, other than at a:
- 1.14.1 Members' Meeting,
- 1.14.1.1 Was or is submitted for consideration to the Member/s to exercise voting rights in relation to the resolution; and
- 1.14.1.2 As or is voted on by the requisite percentage of the Members entitled to vote, by signing a written resolution in counterparts within 20 (twenty) Business Days after the resolution was submitted to them, and includes written polling of Persons entitled to vote regarding the election of Directors.
- 1.14.2 Meeting of Directors, in respect of which all the Directors who may at the time be present in South Africa being not less than a quorum of Directors, voted in favour by signing in Writing a resolution in counterparts, within 20 (twenty) Business Days after the resolution was submitted to them.

## **2. INCORPORATION:**

The Association: –

- 2.1 Is a Non-Profit Company with voting Members, incorporated for a public benefit or other object as required by Item 1(3) of Schedule 1 of the Act.
- 2.2 Cannot distribute its income, profits and property to its Incorporators, Members, Directors, Officers or persons related to any of them, except to the extent permitted by Item 1(3) of Schedule 1 to the Companies Act.
- 2.3 The Association is incorporated in accordance with and governed by: -
- 2.3.1 The unalterable provisions of the Act, save to the extent that this MOI imposes on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement; and
- 2.3.2 The alterable provisions of the Act, subject to the limitations, extensions, variations or substitutions set out in this MOI; and

2.3.3 The other provisions of this MOI.

**3. POWERS OF THE ASSOCIATION:**

3.1 The Association has all of the legal powers and capacity of an individual, except to the extent that a juristic person is incapable of exercising any such power, or having any such capacity or this MOI otherwise limit such legal powers and capacity.

3.2 The Association shall not have the power to distribute in *specie* or in kind any of its assets, including profits, among its Members, Directors, Incorporators or persons appointing Directors, save in terms of Article 3.3.4.

3.3 The specific powers or part of any specific powers of the Association which are qualified or modified are as follows:

3.3.1 The power to form and have an interest in other companies or associations is modified to read: -

*“To form and to have an interest in any company or companies or associations having the same or similar objects to the Association, for the purpose of acquiring the undertaking or all or any of the assets or liabilities of that company or companies or associations or for any other purpose which may seem, directly or indirectly, calculated to benefit the Association, and to transfer to any such company or companies or associations the undertaking or all of the assets and liabilities of the Association”.*

3.3.2 The power to amalgamate with other companies is modified to read: -

*“To amalgamate with other companies having the same or similar objects to that of the Association”.*

3.3.3 The power to take part in the management, supervision and control of other companies is modified to read: -

*“To take part in any management, supervision and control of the business or operations of any other company or business having the same or similar objects as the Association and to enter into partnerships having the same or similar objects as the Association”.*

3.3.4 The power to remunerate any person for services rendered is modified to read: -

*“To remunerate any person or persons in cash or otherwise for services rendered in its formation or in the development of its business, or in terms of Item 1(3) of Schedule 1 to the Act”.*

3.3.5 The power to make donations is modified to read: -

*“To make donations only to organisations having the same or similar objects to that of the Association”.*

3.3.6 The power to establish pension, medical aid and incentive schemes is to read: -

*“To establish a pension scheme and a medical aid scheme and any incentive scheme in respect of its employees”.*

3.3.7 The general powers of the Association are limited, as set out in Items 1(3) and 1(4) of the First Schedule to the Act.

#### **4. AMENDMENTS TO THE MOI:**

4.1 Save for correcting errors substantiated as such from objective evidence or which are self-evident errors (including, but without limitation, *eiusdem generis*, spelling, punctuation, reference, grammar or similar defects) in the MOI, which the Board is empowered to do, all other amendments of the MOI shall be affected in accordance with Article 4.3, read with Article 4.2. The Board shall publish a copy of any such correction effected by the Board on the Association's web-site or sent same to Members by ordinary post or delivered by hand, facsimile or electronic communication.

4.2 In order to fulfil the requirements for exemption from income tax on levies payable to, or accruing to, the Association, any amendment to this MOI must be required to be submitted to the Commissioner of the South African Revenue Services.

4.3 This MOI may be amended at any time if a Special Resolution to amend it:-

4.3.1 Is proposed by: -

4.3.1.1 The Board; or

4.3.1.2 Members entitled to exercise at least 10% of the voting rights that may be exercised on such a resolution; and

4.3.2 Is adopted at a Members' Meeting.

4.4 In addition to Article 4.3 above, this MOI may be amended in compliance with a Court Order and any such amendment in compliance with a court order must be affected by a resolution of the Board and does not require a Special Resolution as contemplated in Article 4.3.2.

4.5 An amendment contemplated in Article 4.3 above, may take the form of a new Memorandum of Incorporation in substitution for this MOI or one or more alterations to the MOI.

4.6 Within 10 (ten) business days after an amendment to the MOI has been effected as contemplated in Articles 4.3 or 4.4 above, the Association must file a Notice of Amendment in the form required by Regulation 15, together with all relevant documents as contemplated in Section 16 (7) of the Act and the prescribed fee.

#### **5. MAIN BUSINESS AND OBJECTIVES:**

5.1 The main **business** of the Association is: –

5.1.1 To manage, operate and maintain the Land, Infrastructure, Buildings, Structures, Facilities and Services as a Private Game Reserve; and

- 5.1.2 To, within its reasonable power and ability, enable and ensure the techno-economic viability of the Zwartkloof Private Game Reserve; and
- 5.1.3 Any and all business ancillary and/or necessary in respect of the above.
- 5.2 The main **objective(s)** of the Association is to promote the group interests of the Members of Association, by:
  - 5.2.1 Preserving, enhancing, managing, operating and maintaining the Land, Infrastructure, Buildings, Structures, Services and the Environment, inclusive of the fauna and flora for the common good of Zwartkloof Private Game Reserve; and
  - 5.2.2 Controlling the aesthetic appearance of Improvements within and/or on Zwartkloof Private Game Reserve; and
  - 5.2.3 Drafting, amending, implementing, repealing and/or enforcing Codes, Rules, Regulations and specifications for Zwartkloof Private Game Reserve; and
  - 5.2.4 Protecting the financial interests of the Members in the Zwartkloof Private Game Reserve; and
  - 5.2.5 Enabling safety and security on Zwartkloof Private Game Reserve within practical limits and within the reasonable control of the Association.

**6. OPTIONAL PROVISIONS OF THE COMPANIES ACT:**

The Company does not elect, in terms of Section 34 (2), to comply voluntarily with the provisions of Chapter 3 of the Companies Act.

**7. SPECIAL CONDITIONS:**

The special conditions which apply to the Association are:-

- 7.1 The income and property of the Association whence so ever derived shall be applied solely towards the promotion of its main **business** and **objective(s)** and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever to the Members of the Association or to a holding company or a subsidiary, provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Association or to any Member thereof in return for any services actually rendered to the Association.
- 7.2 The Association shall be wound-up, deregistered or dissolved, subject to Item 1 (4) (a) and (b) of Schedule 1 to the Companies Act, subject further thereto that:
  - 7.2.1 The Members, if any, or the Association's Directors if there are no Members, by way of Special Resolutions at or immediately before the time of dissolution; or
  - 7.2.2 Failing which the Court shall determine one or more non-profit companies, registered non-profit companies carrying on activities within the Republic, voluntary

associations or non-profit trusts to which the net assets of the Association shall be distributed.

- 7.3 Distributions referred to in Article 7.2 above shall only be made to non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts who have been exempt from income tax in terms of Section 10 (1) (e) (i) (cc) of the Income Tax Act.
- 7.4 The Association is not permitted to distribute its funds to any person other than to a similar association of persons.
- 7.5 Funds available for investment may only be invested with a financial institution as defined in Section 1 of the Financial Services Board Act, Act 97 of 1990 and in securities listed on a stock exchange as defined in Section 1 of the Stock Exchanges Control Act, Act 1 of 1985.

**8. FINANCIAL YEAR:**

The financial year end of the Association, unless otherwise approved, is the last day of June of each year.

**9. ACCOUNTING RECORDS AND FINANCIAL STATEMENTS:**

- 9.1 Notwithstanding the provisions of Article 6 above, the Association shall keep all such accurate and complete accounting records, in English, as are necessary to enable the Association to satisfy its obligations in terms of: -
- 9.1.1 The Act; and
- 9.1.2 The Regulations; and
- 9.1.3 Any other law with respect to the preparation of financial statements to which the Association may be subject to; and
- 9.1.4 This MOI.
- 9.2 The Association shall each year prepare annual financial statements within 6 (six) months after the end of its financial year, or such shorter period as may be appropriate to provide the required notice of an Annual General Meeting in terms of Article 14 below.
- 9.3 The Association shall each year appoint an auditor at its Annual General Meeting. If the Association appoints a firm as its auditor, any change in the composition of the members of that firm shall not by itself create a vacancy in the office of auditor.
- 9.4 In every financial year the financial statements of the Association shall be audited.
- 9.5 The duties of the auditors shall be regulated in accordance with Part C of Chapter 3 of the Act, taking into account Regulations 26 to 29 of the Regulations, provided thereto that the auditors shall be obliged to endeavour to finalise their duties within 3 (three) months after the end of the Association's financial year.

- 9.6 At each Annual General Meeting, the Directors shall lay before the Association the financial statements for the previous financial year, consisting of income statements, cash flows and balance sheets for such previous financial year as well as the financial year immediately preceding such previous financial year, of the Association. The balance sheet for the immediately preceding financial year shall be accompanied by reports of the Directors and the auditors.
- 9.7 The annual financial statements shall be prepared on a basis that is not inconsistent with any unalterable provision of the Act, and shall satisfy as to form and content, the financial reporting standards as determined by the Act.
- 9.8 The Association shall comply with its relevant obligations with regards to the auditing of the financial statements.

**10. MEMBERSHIP AND CLASSES OF MEMBERS:**

- 10.1 The Association shall have a single class of Members with voting rights.
- 10.2 Membership of the Association shall be limited to any person and/or entity that is, or persons and/or entities that are, in terms of the Deeds Registries Act, reflected in the records of the relevant Deeds Office concerned as the registered owner or owners of Stand(s) and/or Portion(s) within Zwartkloof Private Game Reserve and/or on the Property.
- 10.3 A person and/or entity that is, or persons or entities that are, reflected in the records of the Deeds Office as the registered owner, or owners, of Stand(s) or Portion(s) within Zwartkloof Private Game Reserve and/or on the Property shall, subject to proof to the contrary, be deemed to be the lawful registered owner or joint owners, as the case may be, thereof.
- 10.4 Where Stand(s) or Portion(s) within the Zwartkloof Private Game Reserve is owned by more than one person or entity, all the registered owners shall together be deemed to be one Member of the Association and have the rights and obligations of one Member of the Association; provided however that all co-owners of Stand(s) or Portion(s) shall be jointly and severally liable for the due performance of any obligations to the Association.
- 10.5 Concurrently with every offer to purchase Stand(s) or Portion(s) within 'Zwartkloof Private Game Reserve every prospective purchaser must also consent in the prescribed form to his membership of the Association and in which prescribed form such Member shall also choose a *domicilium citandi et executandi* address (address for service) for purposes of Article 10.16 below. Thereafter, and upon registration of the Stand(s) or Portion(s) into the name of such prospective purchaser, he shall *ipso facto* become a Member of the Association, and when he ceases to be the owner of Stand(s) or Portion(s) within Zwartkloof Private Game Reserve, he shall *ipso facto* cease to be a Member of the Association.
- 10.6 In the event of: -
- 10.6.1 Stand(s) or Portion(s) being owned by more than one person, the co-owners concerned shall elect one of their number as liaison person for the Stand(s) or

Portion(s) concerned, and shall notify the Association of the name and address of such liaison person; and/or

- 10.6.2 A Member being a legal entity, trust, close corporation or company such entity shall nominate a natural person to act as its representative and shall advise the Association of such nomination from time to time. The natural person so nominated shall, in a personal capacity, be liable jointly and severally for the obligations of the Member in terms of this MOI.
- 10.7 No Member shall part with occupation of his Stand(s) or Portion(s) or any improvements thereon, whether temporarily or otherwise, unless he has agreed with the proposed occupier of the improvement thereon, as a *stipulatio alteri* (a contract for the benefit of a third party) in favour of the Association, that such occupier shall be bound by all the terms and conditions of this MOI.
- 10.8 No Member may rezone Stand(s) or Portion(s) or in any way change the use of or which Stand(s) or Portion(s) may be utilised whether by way of rezoning, change of Stand(s) or Portion(s) use rights or a consent use or otherwise, irrespective of whether such consent is granted by any lawful authority, without approval of the Association.
- 10.9 No Member may subdivide or consolidate Stand(s) or Portion(s), nor erect a second dwelling on Stand(s) or Portion(s), irrespective of whether any lawful authority grants permission for such subdivision or consolidation or second dwelling, without approval by the Association. The aforementioned is not applicable to and excludes any rights and/or approvals already obtained and granted in favour of the Developer in respect of the Land.
- 10.10 A registered owner of Stand(s) or Portion(s) may not resign as a Member of the Association.
- 10.11 The rights and obligations of a Member shall not be transferable and every Member shall:-
- 10.11.1 Further, to the best of his ability, the objects and interests of the Association; and
- 10.11.2 Observe all approved Codes, Rules, Regulations and specifications made by the Association or the Board; provided that nothing contained in this MOI shall prevent a Member from ceding his rights in terms of these Articles as security to the mortgagee of that Member's Stand(s) or Portion(s).
- 10.12 A failure by a Member to observe the provisions of this MOI, Code(s) and all Rules made by the Association or the Board shall render such Member liable to disciplinary action and/or a fine as determined by the Board from time to time.
- 10.13 When a Member ceases to be the registered owner of (or ceases to have a right to or interest in) Erven(s)/Stand(s) or Portion(s) or Land, he shall, unless otherwise determined by the Board (whose consent may be granted conditionally) *ipso facto* cease to be a Member of the Association.
- 10.14 The Association shall be entitled to bind the Members to contribute by way of subscriptions and levies, as provided in Article 11, towards the funds of the Association, and to enforce payment of, and to collect and receive from Members, such contributions and levies.



10.15 The Association shall be entitled to enforce compliance with this MOI and Code(s) in such manner as it may deem fit, and in particular by means of a system of disciplinary action and/or fines or such additional levy contributions as it may deem fit to prescribe.

10.16 The Association shall keep a register of Members which shall include, as a minimum-

10.16.1 The full names of the Member and the Liaison person or Representative if the Stand(s) or Portion(s) are owned by and registered in the names of more than one natural person or alternatively registered in an entity; and

10.16.2 The identity number, or registration number, of the Member and the Liaison person or Representative referred to in Article 10.16.1 above or, if the Member or Liaison person or Representative is of foreign national, such Member's, or Liaison person's or Representative's , passport number; and

10.16.3 All Stand(s) or Portion(s) registered in the name of the Member;

10.16.4 The chosen *domicilium citandi et executandi* (address for service), as required by Article 10.5 above, of such Member, for purposes of service of any and all legal process; and

10.16.5 An electronic mail address, postal address, physical address and/or a facsimile number, for purposes of forwarding any notice, document or statement, capable of being transmitted electronically, in terms of this MOI or the Act.

10.17 It shall be the Members' obligation to ensure that the information referred to in Article 10.16 is accurate and true. Should any change occur with regards to the information referred to in Article 10.16 above, the Member, or Members, shall duly communicate such change to the Association, in writing, within 14 (Fourteen) days from date of change. Should a Member or Members fail to update their information as required in this Article 10.17, then any service at the registered chosen *domicilium citandi et executandi* (address for service) or delivery of notices or documents to the addresses referred to in Article 10.16.5 above, shall be valid.

10.18 The Association shall bear no responsibility for any inaccurate information provided to it by its Members.

10.19 The Developer shall cease to be a Member of the Association when it is no longer the registered owner of Stand(s) or Portion(s) or Land within Zwartkloof Private Game Reserve and/or on the Property.

## **11. FINANCE COMMITTEE, LEVIES AND CONTRIBUTIONS:**

11.1 The Board may, in terms of Article 21, read with this Article 11, establish a Finance Committee, which shall consist of at least one Director and such other person or persons as the Board may determine. The Finance Committee shall act under delegated authority of the Board.

11.2 The Board shall from time to time impose levy contributions, subject to Articles 11.19 and 11.20 below, upon Members for the purpose of meeting all the expenses which the Association has incurred or to which the Board reasonably anticipates the Association will be

liable or will incur (including expenditure of a capital nature) in the pursuance of the main business and objects of the Association and whether by way of: –

- 11.2.1 Preserving, enhancing, managing, operating and maintaining the Land, Infrastructure, Buildings, Structures, Services, Facilities and the environment and keeping same in good order and condition for the common good of Zwartkloof Private Game Reserve;
- 11.2.2 Controlling the aesthetic appearance of improvements within and/or on Zwartkloof Private Game Reserve; and
- 11.2.3 For the payment of all rates and other charges payable by the Association to the local authority in respect of the services rendered to the Association by the Local Authority; and
- 11.2.4 For payment of service fees, purchases, insurances, licences, taxes, as may be applicable and related to the Development; and
- 11.2.5 For payment of the salaries and/or wages of the employees of the Association; and
- 11.2.6 Generally for the payments of all expenses necessarily or reasonably incurred in connection with the management of the Association and its affairs.

11.3 In pursuance of the objectives of Article 11.2 above, the Board: –

- 11.3.1 Shall prepare an itemised estimate of income and expenditure (the “**annual budget**”) in respect of the ensuing financial year, prior to the commencement of such ensuing financial year; and
- 11.3.2 Shall include in the annual budget an amount to be transferred to and held in reserve (“**the reserve fund**”) to meet anticipated future expenditures not of an annual nature, including reasonable provision for, without limitation the future maintenance, repairs and replacements of capital Plant, Vehicles, Equipment, Infrastructure, Buildings, Structures and Services.

11.4 In computing and levying contributions for each Member, whether as a levy contribution, special contribution or an additional contribution, respectively referred to in Article 11.2 above and Articles 11.11 and 11.12 below, the Board shall take into account the nature of the entire Zwartkloof Private Game Reserve and expenses relating to it as prescribed by the Board.

11.5 The Board shall approve the annual budget before the commencement of the following financial year as per the Members' mandate given at the previous Annual General Meeting.

11.6 The Board shall, whenever it shall consider it appropriate, be entitled to recover the levy contributions referred to in Article 11.4 above from Members from time to time and at the end of each financial year, or as soon thereafter as reasonably possible, notify each Member at the address chosen by him, of the nature and amount of the relevant levy contributions paid and required to be paid by Members and required by the Association to meet the expenses during the following financial year.

- 11.7 Each notice to Members advising of any levy contribution shall specify the amount payable by that Member in respect of the annual budget.
- 11.8 Every levy contribution as referred to in Article 11.4, shall be payable in such manner as the Board may from time to time determine.
- 11.9 In the event of the Board, for any reason whatsoever, failing to prepare and serve notice as envisaged in the above Articles 11.6 and 11.7 timeously, every Member shall until receipt of such notice continue to pay the relevant levy contributions previously imposed, and shall after such notice immediately pay such adjusted levy contributions as may be specified in the notice referred to in Articles 11.6 and 11.7.
- 11.10 The Board may from time to time levy special contributions upon all Members including but not limited to all such expenses as mentioned in Article 11.2 and notwithstanding as to whether same was included in any estimate made in terms of Articles 11.6 and 11.7 or not.
- 11.11 The Board may from time to time levy additional contributions upon specific Members for services provided which includes but is not limited to non-compliance with the MOI, Code(s) or Rules, Regulations, specifications and the Company subsequently incurring expenses and/or costs to rectify same on behalf of a Member.
- 11.12 The Board shall in addition to such other rights as the Association may have in law as against its Members, to determine the rate of interest from time to time chargeable upon arrear levy contributions: Provided that such rate of interest shall not exceed the rates laid down in terms of the National Credit Act, Act 34 of 2005, as amended, as if the arrear levy contribution were a money lending transaction as defined in the said Act.
- 11.13 Any amount due by a Member by way of levy contributions, together with any interest owed by the Member to the Association, shall be a debt due by him to the Association. The obligation of a Member to pay all levy contributions and interest shall cease upon his ceasing to be a Member without prejudice to the Association's rights to recover all arrear levy contributions and interest. No levy contributions or interest paid by a Member shall under any circumstances be repayable by the Association upon his ceasing to be a Member unless so determined by the Board in its sole and absolute discretion. A Member's successors in title shall be liable as from the date upon which he becomes a Member of the Association, to pay the levy contribution and interest thereon attributable to the interest to which he succeeds.
- 11.14 Subject to Article 11.15, in calculating the contributions payable by any Member, the Board shall as far as reasonably practical assign those costs and expenses for all services of whatsoever nature attributable to Zwartkloof Private Game Reserve as a whole, generally to the owners of Stand(s) or Portion(s) equally.
- 11.15 No Member shall be entitled to any of the privileges of membership of the Association, including the right to vote at a Members' Meeting, unless and until he shall have paid every levy contribution together with interest thereon which may be due and payable to the Association from whatsoever cause arising.

- 11.16 The Directors shall be empowered to impose penalty levies on owners who have failed to comply with the obligation to build and/or exceed the allowable building period as determined by the Board of Directors of the Association or in the Deed of Sale and/or subsequent Deed of Transfer by virtue of which the Stand(s) or Portion(s) was obtained and/or originally obtained (as the case may be), which levies shall be payable in addition to levies normally applicable to other Stand(s) or Portion(s).
- 11.17 Expenses and costs relating to services shared between the Association and the Developer shall be dealt with as follow:
- 11.17.1 The Association shall have the right to recover expenses and costs related to services provided and/or managed on behalf of, or shared with and to the benefit of the Developer or any other third party; and
- 11.17.2 The Association shall have the right to pay the Developer for services and/or any benefit received from or shared with the Developer or any other third party.
- 11.17.3 Any services shared between the Association and the Developer shall be confirmed and agreed to in writing between all the relevant parties.
- 11.18 The Developer shall have no liability to pay levies as contemplated in this Article 11 in respect of Portions 124 (was 24), 125 (“the remainder thereof” to be registered as 178), 126 (“the remainder thereof” to be registered as 278) and the Remainder (“the remainder thereof” to be registered as 337) and any unsold Stand, subject thereto that any such unsold Stand(s) is not in any way whatsoever or by any means occupied by the Developer, its employees, contractors, service providers, or any entity and/or person related to the Developer.
- 11.19 The provisions as stipulated in Article 11.18 shall not be applicable to any Stand purchased by or acquired in any way or by any means whatsoever by the Developer from a third party.

**12. THE PROCEDURE FOR THE MAKING OF RULES:**

- 12.1 Rules made in terms of Article 13.1 below, shall: –
- 12.1.1 Be published, in any manner required or permitted by this MOI, the Rules or the Act; and
- 12.1.2 Be filed at the Commission.
- 12.2 Publishing of any Rules made in terms of Article 13.1 below, or any amendment thereof shall:
- 12.2.1 Be in writing and be sent by ordinary post or delivered by hand, facsimile, electronic mail or published on the Association's website; and
- 12.2.2 Be send to the Member by electronic mail or addressed to the respective Member at his address shown in the register of Members; and
- 12.2.3 Be deemed to have been received by the Member to whom it is addressed at the time of delivery thereof, or on the 7th day following the posting thereof (excluding the day upon which it was posted) in the Republic, or in the case of a facsimile, on

the date and time stipulated on the facsimile transmission report thereof, or in the case of an electronic mail, on the date and time recorded by the computer of the Association.

12.3 A Rule contemplated in Article 12.1 above: –

12.3.1 Must be consistent with the Act and this MOI, and any such Rule that is inconsistent with the Act or this MOI is void to the extent of the inconsistency; and

12.3.2 Takes effect on a date that is the later of:-

12.3.2.1 10 (ten) business days after the Rule is filed in terms of Article 12.1.2 above; or

12.3.2.2 The date, if any, specified in the Rule; and

12.3.3 Is binding: –

12.3.3.1 On an interim basis from the time it takes effect until it is put to a vote at the next Members' Meeting of the Association; and

12.3.3.2 On a permanent basis only if it has been ratified by a Special Resolution at the next Members Meeting of the Association as contemplated in Article 12.3.3.1 above.

12.4 If a Rule that has been filed in terms of Article 12.1.2 is subsequently: –

12.4.1 Ratified as contemplated in Article 12.3.3.2 above, the Association must file a notice of ratification within 5 (five) business days in the prescribed manner and form; or

12.4.2 Not ratified when put to a vote: –

12.4.2.1 The Association must file a notice of non-ratification within 5 (five) business days after the vote, in the prescribed manner and form; and

12.4.2.2 The Board may not make a substantially similar Rule within the ensuing 12 (twelve) months, unless it has been approved in advance by Special Resolution of the Members.

12.5 Any failure to ratify a Rule of the Association does not affect the validity of anything done in terms of that Rule during the period that it had an interim effect.

12.6 This MOI, Codes, any Rules, Regulations and specification of the Association, are binding: –

12.6.1 Between the Association and each Member; and

12.6.2 Between or among the Members; and

12.6.3 Between the Association and: –

12.6.3.1 Each Director or prescribed officer of the Association; and

12.6.3.2 Any other person serving the Association as a member of a committee or sub-committee of the Board; in the exercise of their respective functions within the Association.

12.7 Notwithstanding the provisions of Articles 12.2 to 12.6 above, where an amendment to the Rules is one to correct self-evident errors (including, but without limitation *eiusdem generis*, spelling, punctuation, reference, grammar or similar defects), the Board shall publish a copy of any such correction effected by the Board on the Association's website or sent same to Members by ordinary post or delivered by hand, facsimile or electronic mail.

12.8 Should any notice, document or statement be published on the Association's website, the provisions of this MOI shall be complied with.

### **13. RULES:**

13.1 The Board may, in terms of section 15 (3) of the Act and subject to Articles 12.3 and 13.10 from time to time make, amend or repeal any necessary or incidental term(s) of a Code and/or Rules relating to the Association. The authority of the Board in this regard is not limited or restricted in any manner in this MOI.

13.2 In addition to Article 13.1 above, the Rules of the Association in existence at the time that this MOI is registered at the Commission, shall be binding as if such Rules were made in accordance with this MOI and in terms of the Act.

13.3 In further addition to Article 13.1 above, and subject to any restriction imposed or direction given at a Members' Meeting of the Association, the Board may from time to time make Management Regulations and Rules which shall include, but not be limited to the following: –

13.3.1 Safety and Security: Determining, composing, implementing and enforcing provisions and instructions related to *inter alia*, fire prevention and control, access control and security, use of roads, infrastructure, services, facilities, waste management, hygiene and restrictions related to game (subject to Article 13.3.7 below) and general movement and traversing on the Reserve; and

13.3.2 Environment: The protection and preservation of the environment including the right to preserve the Reserve's fauna and flora, control alien and invader vegetation and erosion, protect the water sources (surface and underground); and

13.3.3 Good neighbourliness: To enable good neighbourliness by enabling general acceptable practices and preventing nuisances and disturbing behaviour; and

13.3.4 Site development and architecture: Standards, specifications and guidelines for any site, Stand(s) development, architectural design and construction of all improvements including buildings, structures, swimming pools, lapa's, screen walls, fences, water-, electrical-, water-, sewer and gas systems and all additions and alterations to any such improvements; and

13.3.5 Visitors, service providers, contractors and employees: Determining, composing implementing and enforcing terms and conditions to manage the conduct of visitors,

service providers, contractors, employees and any third parties entering and traversing on the Reserve; and

-13.3.6 Letting and re-selling of property: Determining, composing and implementing and enforcing terms and conditions as relating to the letting (leasing) and re-selling of developed and/or undeveloped Stand(s) or property; and

13.3.7 Game: Ownership, including the protection and maintenance of the game, unless otherwise agreed, is that of Zwartkloof Development (Pty) Ltd who will determine and lay down the rules to be complied with by Members of the Association; and

13.3.8 Pets: In principle, save for guide dogs for sight impaired persons, no pets and/or domestic animals will be allowed on the Reserve; and

13.3.9 Recreation and common facilities: The terms and conditions as related to the use of the facilities, common areas, entertainment and recreation areas, amenities, including the right to determine and prescribe a reasonable fee for the private and/or exclusive use/reservation thereof; and

13.3.10 Purpose and objectives of the Association: Promotion and upholding of the purpose and objective of the Association and/or for the better management of the affairs of the Association and/or for the protection and advancement of the interests of Members and/or residents on Zwartkloof Private Game Reserve; and

13.3.11 Policies and Procedures: Determining, composing, implementing and enforcing policies and procedures to enable and/or advance the management-, operation-, maintenance of services provided or to be provided on the Reserve This shall *inter alia* include procedures related and/or applicable to: -

13.3.11.1 The functions of the ZPGR HOA Directors, Management, Employees, Managing agent, Service providers and Contractors; and

13.3.11.2 The activities and actions of owners and/or members, their family, guests, friends, visitors, employees, servants, Services providers, contractors and third parties entering and traversing on the Reserve.

13.4 For the enforcement of any of the existing or future Rules made by the Board in terms hereof, the Board may: –

13.4.1 Give notice to any Member requiring him to remedy any such breach within a reasonable period as the Board may determine; and/or

13.4.2 Take or cause to be taken such steps as it may consider necessary to remedy any breach of which the Member may be guilty of and debit the costs of so doing to the Member concerned as contemplated in Article 11 hereof; and/or

13.4.3 Impose a system of fines and/or penalties, as the case may be, the amounts of which shall be determined by the Board and stipulated in the Rules; and/or

13.4.4 Take such action including proceedings in Court as it may deem necessary.

13.5 The Rules or any amendment thereto must be published in accordance with this MOI.

13.6 In the event of the Board taking any legal steps or instituting any legal proceedings against any Member or resident within Zwartkloof Private Game Reserve for the enforcement of this MOI, any of the Rules or rights of the Association in terms of this MOI, including the collection of any arrear levies, interest and/or any other debt due by the Members to the Association, the Association shall be entitled to appoint such attorneys and counsel as it deems necessary and to recover all legal costs so incurred from the Member or resident concerned, calculated as between attorney and own client, and to debit such Member's account with such legal costs accordingly if necessary.

13.7 In the event of any breach of the Rules by any Member's household or his visitors, guests, service providers, contractors or lessees, the Board may take or cause to be taken such steps against the Member personally, or against the person who actually committed the breach, as the Board may in its sole discretion decide and deem necessary.

13.8 In the event of any Member disputing the fact that he has committed a breach of any provision of this MOI or a Rule of the Association, a committee of three persons appointed by the Board for the purpose shall adjudicate upon the issue at such time and in such manner and according to such procedure as the Chairman may direct: Provided that natural justice shall be observed. A person who is not satisfied with the decision of the said committee may appeal to the Board whose decision is final.

13.9 Any fine and/or penalty imposed upon a Member in terms of these Articles shall be deemed to be a debt by the Member to the Association and, if not paid, shall be recoverable by ordinary civil process.

13.10 The Members may by means of a Special Resolution at a Members' Meeting specifically called for such purpose or in respect of which notice has been given, require that certain Rules be made, amended or repealed by the Board, and/or that any Rules made or amended be entrenched. Any Rule so entrenched shall only be capable of being amended or repealed by the Members of the Association by means of a Special Resolution.

**14. MEMBERS' MEETINGS, PROXIES AND VOTING RIGHTS:**

14.1 The Association elects to hold the following Meetings additional to those required by the Act:

14.1.1 The Association shall, within 6 (six) months after the end of each financial year, hold a general Meeting of Members, to be referred to as the Annual General Meeting, in addition to any other Members' Meetings during that year and shall specify the Meeting as such in notices to Members calling such Meeting.

14.2 A Meeting convened in terms of Article 14.1.1 above, must, at a minimum, provide for the following business to be transacted:-



- 14.2.1 Presentation and consideration of:-
  - 14.2.1.1 The Directors' report; and
  - 14.2.1.2 The audited financial statements for the immediately preceding financial year; and
  - 14.2.1.3 The auditors' report; and
  - 14.2.1.4 Capital-, operating- and maintenance budget, including, the recording and confirmation of contributions and/or levies for the ensuing financial year; and
  - 14.2.1.5 The rates and fixed charges for water and electricity for the ensuing financial year.
- 14.2.2 Election and appointment of an auditor/auditing firm for the forthcoming financial period; and
- 14.2.3 Election of Directors, to the extent required by the Act or this MOI; and
- 14.2.4 Ordinary resolutions; and
- 14.2.5 Special resolutions; and
- 14.2.6 Any matters raised by the Members with at least 10 (ten) days' written notice to the Association; and
- 14.2.7 *Domicilium* address of the Association.
- 14.3 Every Members' Meeting shall, unless otherwise resolved by the Association, be held within the precincts of Zwartkloof Private Game Reserve at such reasonable time and location as the Board may decide.
- 14.4 All Members' Meetings other than Annual General Meetings shall be called Special General Meetings.
- 14.5 The Board may whenever it deems fit convene a Special General Meeting and must call such a Meeting, in terms of section 61(3) of the Act, if:-
  - 14.5.1 One or more written and signed demands for such a Meeting are delivered to the Association; or
  - 14.5.2 Such demand describes the specific purpose for which the Meeting is proposed; and
  - 14.5.3 In aggregate, demands for substantially the same purposes are made and signed by Members, as of the earliest time specified in any of those demands, of at least 5 % (five percent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the Meeting.

- 14.6 The Board may, as an alternative to calling a Special General Meeting, and insofar as is practical and in accordance with the provisions of the Act:-
- 14.6.1 Submit a Resolution for consideration to the Members entitled to exercise voting rights in relation to the Resolution; and
  - 14.6.2 Such Resolution may be voted on in writing by the Members entitled to exercise voting rights in relation to the resolution within 20 (twenty) days after the resolution was submitted to them.
- 14.7 A resolution provided for in Article 14.6 above, will be referred to as a Round Robin Resolution and shall comply with the provisions of Section 60 of the Act.
- 14.8 For greater certainty in respect of which matters may be put to vote by a resolution as contemplated in Article 14.6 above, the business required to be discussed during an Annual General Meeting, may not be put to vote in accordance with Article 14.6 above: Provided that, in terms of Section 60 (3) of the Act, an election of a Director that could be conducted at a Members' Meeting, may instead be conducted by way of written polling, in accordance with Article 14.6 above, of all the Members entitled to exercise voting rights in relation to the election of Directors.
- 14.9 The Association shall not be entitled to conduct a Members' Meeting entirely by Electronic Communication, or to provide for participation in a Members' Meeting by Electronic Communication, as set out in Section 63 (2) of the Act.
- 14.10 Notice of Members' Meetings shall be in accordance with section 62 of the Companies Act.
- 14.11 A Members' Meeting shall be called by at least 15 (fifteen) Business Days' notice delivered by the Association to all Members entitled to vote or otherwise entitled to receive notice.
- 14.12 The Association may call a Members' Meeting with less notice than required by Article 14.11, but such a Members' Meeting may proceed only if every person who is entitled to exercise voting rights in respect of any item on the Meeting agenda: –
- 14.12.1 Is present at the Members' Meeting; and
  - 14.12.2 Votes to waive the required minimum notice of the Members' Meeting.
- 14.13 A Member entitled to vote, subject to Article 11.15 above, who is present at a Meeting, either in person or by proxy: –
- 14.13.1 Is regarded as having received or waived notice of the Meeting, if at least the required minimum notice was given; and
  - 14.13.2 Has a right to: -
    - 14.13.2.1 Allege a material defect in the form of notice for a particular item on the agenda for the Meeting; and

- 14.13.2.2 Participate in the determination whether to waive the requirements for notice, if at least the required minimum notice was given, or to ratify a defective notice.
- 14.13.3 Except to the extent set out in Article 14.13.2 is regarded to have waived any right based on an actual or alleged material defect in the notice of the Members' Meeting.
- 14.14 A notice of a Members' Meeting must be in writing, in plain language and must include: -
- 14.14.1 The date, time and place for the Meeting as well as the Record Date for the Meeting; and
- 14.14.2 The general purpose of the Meeting, and any specific purpose contemplated in Article 14.5.2, if applicable; and
- 14.14.3 A copy of any proposed Resolution of which the Association has received notice and which is to be considered at the Meeting, as well as a notice of the percentage of voting rights that will be required for that Resolution to be adopted; and
- 14.14.4 In the case of an Annual General Meeting of the Association:-
- 14.14.4.1 The financial statements to be presented or a summarised form thereof; and
- 14.14.4.2 Directions for obtaining a copy of the complete annual financial statements for the preceding financial year.
- 14.14.5 A reasonably prominent statement that: –
- 14.14.5.1 A Member entitled to attend and vote at the Meeting is entitled to appoint a proxy to attend, participate in and vote at the Meeting in the place of the Member; and
- 14.14.5.2 A proxy need not also be a Member of the Association; and
- 14.14.5.3 Section 63 (1) requires that Meeting participants provide satisfactory identification.
- 14.15 A Meeting may proceed notwithstanding a material defect in the giving of the notice of such Meeting, subject to Article 14.16, only if every person who is entitled to exercise voting rights in respect of any item on the Meeting agenda is present at the Meeting and votes to approve the ratification of the defective notice.
- 14.16 If a material defect in the form or manner of giving notice of a Meeting relates only to one or more particular matters on the agenda for the Meeting: -
- 14.16.1 Any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and
- 14.16.2 The Meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified.

14.17 An immaterial defect in the form or manner of giving notice of a Members' Meeting, or an accidental or inadvertent failure in the delivery of the notice to any particular Member to whom it was addressed if the Association elects to do so, does not invalidate any action taken at the Meeting.

14.18 A Meeting may not begin, and a matter to be decided at the Meeting may not begin to be considered, unless sufficient number of Members are present at the Meeting to exercise, in aggregate, **at least 25 % (twenty five percent)** of all of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the Meeting.

14.19 If within 1 (one) hour after the appointed time for the Meeting to begin, the requirements of Article 14.18.1, if applicable: -

14.19.1 For that Meeting to begin have not been satisfied, the Meeting is postponed without motion, vote or further notice, for 1 (one) week;

14.19.2 For consideration of a particular matter to begin have not been satisfied:-

14.19.2.1 If there is other business on the agenda of the Meeting, consideration of that matter may be postponed to a later time in the Meeting without motion or vote; or

14.19.2.2 If there is no other business on the agenda of the Meeting, the Meeting is adjourned for 1 (one) week, without motion or vote.

14.20 A Members' Meeting may not be adjourned beyond the earlier of:-

14.20.1 The date that is 45 (forty five) Business Days after the Record Date; or

14.20.2 The date that is 30 (thirty) Business Days after the date on which the adjournment occurred.

14.21 No further notice is required to be given by the Association of a Meeting that is postponed or adjourned as contemplated in Article 14.19, unless the location for the Meeting is different from: -

14.21.1 The location of the postponed or adjourned Meeting; or

14.21.2 A location announced at the time of adjournment, in the case of an adjourned Meeting.

14.22 After a quorum has been established for a Meeting, or for a matter to be considered at a Meeting, the Meeting may not continue, or the matter may not be considered, if the Members present, for whichever reason, no longer constitute a quorum.

14.23 At every Members' Meeting: -

14.23.1 Members present in person or by proxy and entitled to vote shall have 1 (one) vote for each Ordinary and Special Resolution for each Stand(s) or Portion(s), developed or not, registered in his name;

- 14.23.2 Co-owners having rights or interests in respect of the same Stand(s) or Portion(s) shall jointly have 1 (one) vote for each Ordinary and Special Resolution;
- 14.23.3 The votes attached to the Developer has been agreed between Zwartkloof Private Game Reserve Home Owners Association NPC and the Zwartkloof Development (Pty) Ltd (The Developer) as prescribed in the **“Memorandum of Agreement”** following approval by means of a Special Resolution of Members and the Developer at the Annual General Meeting dated 13 October 2018 and amended as per Special Resolution of Members and the Developer at the Annual General Meeting dated 19 October 2019. The voting right of the Developer to be the residual of number of Stands in Phases one (95), Phase two (52) and twenty-two in phase three (169 in total) minus the Stands sold in Phases one, two and three **OR** the number of un-sold serviced and registered stands ready to be purchased and transferred, which-ever is the higher number.
- 14.24 Save as expressly provided for in these Articles and unless specifically permitted otherwise by the Chairman, no person other than a Member duly registered, and who shall have paid every contribution, levy and other sum, if any, which shall be due and payable to the Association in respect of or arising out of his membership, and who is not under suspension, shall be entitled to be present or to vote on any matter either personally or by proxy at any Members' Meeting. In the event of a Member being in breach of any Rule, such Member in breach shall not be entitled to vote in respect of any proposed amendment(s) and/or change(s) to such Rule.
- 14.25 Notwithstanding any provision in this MOI providing for the contrary, all voting shall be done by way of polling, in such manner as the Chairman of the Meeting may direct, subject to Article 14.31 below.
- 14.26 Every Resolution and every amendment of a Resolution proposed at a Members' Meeting shall be seconded at the Meeting and if not so seconded shall be deemed not to have been proposed.
- 14.27 In the case of equality of votes for and against any resolution, the Chairman shall have a second and/or casting vote.
- 14.28 Unless any Member present in person or by proxy at a Members' Meeting shall before the closure of the Meeting have objected to: -
- 14.28.1 Any declaration made by the Chairman of the Meeting as to the result of any voting at the Meeting, by poll; and/or
- 14.28.2 The propriety of validity of the procedure at such a Meeting.
- 14.28.3 A declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the Meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry confirms the declaration made by the Chairman of the

Meeting as to the result of any voting at the Meeting. All Resolutions by the Members must be dated and sequentially numbered in the minutes of the Association.

- 14.29 The Chairman of the Board shall preside as Chairman at every Members' Meeting. If there is no such Chairman, or if at any Members' Meeting she/he is not present within 15 (fifteen) minutes after the time appointed for holding the Members' Meeting or is unwilling to act as Chairman, the Members entitled to vote which are present shall select a Director present at the Members' Meeting, or if no Director be present at the Members' Meeting, or if all the Directors present decline to take the chair, the Members present and entitled to vote shall select one of their number which is present to be Chairman of the Members' Meeting.
- 14.30 No objection shall be raised as to the admissibility of any vote except at the Members' Meeting or adjourned Members' Meeting at which the vote objected to is or may be given or tendered and every vote not disallowed at such Members' Meeting shall be valid for all purposes. Any such objection shall be referred to the Chairman of the Members' Meeting, whose decision shall be final and conclusive.
- 14.31 A poll shall be taken in such manner as the Chairman directs and the result of the poll shall be deemed to be the Resolution of the Members' Meeting. Scrutineers may be appointed by the Chairman to declare the result of the poll and if appointed, their decision, which shall be given by the Chairman of the Members' Meeting, shall be deemed to be the Resolution of the Members' Meeting.
- 14.32 A poll shall be taken forthwith. The demand for a poll shall not prevent the continuation of a Members' Meeting for the transaction of any business other than the question upon which the poll has been demanded. The demand for a poll may be withdrawn.
- 14.33 Only Members of the Association who have voting rights may vote at any Members' Meeting.
- 14.34 Every Resolution of Members is either an Ordinary Resolution or a Special Resolution. An **Ordinary Resolution**, save to the extent expressly provided in respect of a particular matter contemplated in this MOI, if any, shall require to be adopted with the support of more than **50% (fifty percent)** of the voting rights, represented at the meeting in person and by proxy, exercised on the Resolution. A **Special Resolution**, save to the extent expressly provided in respect of a particular matter contemplated in this MOI, if any, shall require to be adopted with the support of at least **75% (seventy five percent)** of the voting rights, represented at the meeting in person and by proxy, exercised on the Resolution.
- 14.35 A Member may be represented at a Members' Meeting by proxy, who need not be a Member of the Association. A proxy shall not be entitled to delegate his authority to act on behalf of the Member to another person. A Member may appoint a single person as proxy or two persons concurrently as proxies, to act in the alternative should one of them not be able to be present at the Meeting, provided that no person, excluding the Developer, shall be entitled to accept and/or be the holder of, more than 5 (five) proxy appointments.
- 14.36 A proxy shall be appointed on a proxy form ("Proxy Form") prepared for that purpose by the Association and made available for use to appoint proxies.

- 14.37 The Proxy Form shall be signed by the Member concerned or his duly authorised agent, provided that where a Member is more than one person, a majority of those persons shall sign the Proxy Form on such Member's behalf. Where a Member is a company, the Proxy Form may be signed by the Chairman of the Board of Directors of that Company or by its Secretary, and where an association of persons, by the Secretary thereof, or in the case of a trust, a duly appointed Trustee thereof.
- 14.38 No proxy form shall be valid after the conclusion of the Meeting at which the proxy was to be exercised or such later Meeting held due to adjournment.
- 14.39 The form appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a certified copy of such power or authority shall be delivered to the Association 48 (forty-eight) hours prior to the Members' Meeting, before the proxy exercises any rights of the Member entitled to vote at a Members' Meeting.
- 14.40 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Membership in respect of which the proxy is given, provided that no intimation in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the Association at its Registered Office before the commencement of the Members' Meeting or adjourned Members' Meeting at which the proxy is used.
- 14.41 If a proxy is received duly signed but with no indication as to how the Person named therein should vote on any issue, the proxy may vote or abstain from voting as he sees fit.
- 14.42 The Members may by simple majority direct that the next Annual General Meeting of the Association shall be held at such other place as the Members, as the case may be, by simple majority, deem fit.
- 14.43 In addition to Resolutions required by the Act to be approved by Special Resolution, the following Resolutions and/or business shall require approval by the Members by way of a Special Resolution:
- 14.43.1 Changes and/or amendments to the Development that would affect the Rights of the Members;
  - 14.43.2 Changes and/or amendments to this Memorandum of incorporation;
  - 14.43.3 The Members, by Special Resolution, may, at a Members' Meeting specifically called for such purpose or in respect of which notice has been given, require that certain Rules be made, amended or repealed by the Board, and in the event of any such Rules made or amended, require that same be entrenched. Any Rule so entrenched shall only be capable of being amended or repealed by the Members of the Association by Special Resolution.

**15. RECORD DATE:**

15.1 If the Board determines the Record Date, it may not be earlier than the date on which the Record Date is determined or more than 10 (ten) Business Days before the date on which the event or action, for which the Record Date is being set, is scheduled to occur.

15.2 If, at any time, the Board fails to determine a Record Date, the Record Date for the relevant matter is: -

15.2.1 In the case of a Members' Meeting, the latest date by which the Association is required to Deliver to Members entitled to vote, notice of that Members' Meeting;  
or

15.2.2 The date of the action or event, in any other case.

15.3 The Association must publish a notice of a Record Date for any matter by:-

15.3.1 Delivering a copy to each Member; and

15.3.2 Posting a conspicuous copy of the notice:-

15.3.2.1 At its registered office; or

15.3.2.2 On the Association's web-site, if it has one.

**16. DIRECTORS, ELECTION OF DIRECTORS AND CASUAL VACANCIES:**

16.1 There shall be a Board of Directors of the Association which shall consist of not less than 5 (five) and not more than 9 (nine) Directors. Any failure by the Association at any time to have the minimum number of Directors, does not limit or negate the authority of the Board, or invalidate anything done by the Board or the Association.

16.2 A Director shall be an individual but need not himself be a Member of the Association. A Director, by accepting his appointment to office as such, shall be deemed to have agreed to be bound by all the provisions of this MOI and the Rules of the Association.

16.3 Except to the extent provided in Article 16.12 below, each of the Directors shall be elected (which in the case of a vacancy arising shall take place at a Members' Meeting or by Round Robin Resolution contemplated in Article 14.6 above, held or taken within 6 (six) months of the vacancy arising subject to Section 68 (3) of the Act), by the Members at a Members' Meeting, subject to Article 16.4 below, to serve as a Director for a **period of 2 (two) years**. After the expiry of the aforementioned 2 (two) years, a Director shall be deemed to have retired from office on condition that such retiring Director shall be eligible for re-election.

16.4 In addition to Article 16.3 above, at least one-third (1/3rd) of the Board (decimals rounded off to a full number) shall retire immediately before each Annual General Meeting. Such retiring Directors shall be eligible for re-election. At least one-third (1/3rd) of the number of Directors in office shall be elected each year at the Annual General Meeting of the Association.



- 16.5 There are no general qualifications prescribed by the Association for a Person to serve as a Director in addition to the requirements of the Companies Act, Act No.71 of 2008.
- 16.6 No Director shall be entitled to appoint any person as an Alternate Director to himself.
- 16.7 In any election of Directors (other than appointment by the Board in terms of Article 16.9 below of a person in order to fill a casual vacancy which may arise from time to time or the election of such a person by the Members at a subsequent Members' Meeting, or the appointment of a Director by the Developer as contemplated in Article 16.12 below) the election is to be conducted at an Annual General Meeting, as follows –
- 16.7.1 The election is to be conducted in order to fill all vacancies on the Board at that time, which vacancies shall, in any event, in each year be at least a 1/3 (one third) of the Directors in office.
- 16.7.2 The notice in respect of the Annual General Meeting shall set out which Directors are deemed to have, or will be deemed to have, retired and which of them have made themselves available for re-election.
- 16.7.3 The Members shall each be entitled to nominate 1 (one) person, including retired Directors who have made themselves available for re-election, to serve as a Director of the Association.
- 16.7.4 All nominations are to reach the Association at least 10 (ten) days before the date and time scheduled for the Annual General Meeting to begin. Each nominated person shall provide the Association with his consent in writing to serve as a Director, prior to the commencement of the Annual General Meeting.
- 16.7.5 Every Member shall be entitled to vote, per voting right, for a number of candidates equal to the number of vacancies at that time, irrespective of the number of candidates appearing on the ballot paper.
- 16.7.6 Vacancies shall be filled by the candidates who have received the most votes. The aforementioned is illustrated as follows: In the event that there are 3 (three) vacancies, the three candidates who have received the top three amounts of votes, shall be appointed.
- 16.8 No election of a Director shall take effect until he has delivered to the Association a written consent to serve and every candidate who failed to provide the Association with his written consent shall be disqualified from the elections.
- 16.9 In the event of any casual vacancy occurring on the Board, the Board may fill such position by a person who satisfies the requirements for election as a Director, which person will serve as a Director on a temporary basis until the vacancy has been filled by an election in terms of Article 16.7 above, at which election the person so appointed by the Board may be elected as a Director of the Association by the Members. During the aforementioned interim period, the person so appointed by the Board shall have all the powers, functions and duties, and be subject to all the liabilities, of any other Director of the Association. The Individual so

appointed shall cease to hold office at the termination of the first Members' Meeting to be held after the appointment of such individual as a Director unless he is elected at such Members' Meeting or by Round Robin Resolution.

16.10 In the event of a vacancy arising on the Board, the continuing Directors (or sole continuing Director) may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the minimum number fixed by or pursuant to this MOI, the continuing Directors or Director may act only for the purpose of summoning a Members' Meeting.

16.11 If there is no Director able and willing to act, then any Member entitled to exercise voting rights in the election of a Director may convene a Members' Meeting for the purpose of appointing Directors.

16.12 Notwithstanding anything to the contrary contemplated above, the Developer, while being a registered owner of Stand(s) or Portion(s) or Land within and/or on Zwartkloof Private Game Reserve, shall be entitled to appoint 1 (one) Director, which appointed Director need not be elected by the Members, nor retire, as contemplated in Articles 16.3 and 16.7 above and which appointed Director's office shall not be taken into account for purposes of the 1/3rd (one-third) annual election as stipulated in Article 16.7.1.

16.13 The Developer shall be entitled from time to time on notice to the Association, to terminate the appointment of any Director appointed by it in terms of Article 16.12 above and to appoint such other person as a Director of the Association; Provided that the Developer shall indemnify the Association, its Directors and Members against any claims that a Director, appointed and subsequently removed by the Developer, may have.

## **17. CESSATION OF OFFICE AS DIRECTOR:**

17.1 The provisions of Sections 69, 70 and 71 of the Act, apply to the cessation of office as Director and, importantly, a Director shall cease to hold office as such:-

17.1.1 Immediately when he/she becomes ineligible or disqualified or the Board resolves to remove him on such basis, and in the latter case the has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period he shall be suspended); or

17.1.2 He/she retires as contemplated in Article 17.2; or

17.1.3 When he/she dies; or

17.1.4 When he/she resigns by written notice to the Association; or

17.1.5 If there are more than 3 (three) Directors in office and if the Board determines that he/she has become incapacitated to the extent that he/she is unable to perform the functions of a Director, and is unlikely to regain that capacity within a reasonable time, and the Director has not within the permitted period filed an application for review or has filed such an application but the Court has not yet confirmed the removal (during which period he shall be suspended); or

- 17.1.6 If he/she is declared delinquent by a Court, or placed on probation under conditions that are inconsistent with continuing to be a Director of the Association; or
- 17.1.7 If he/she is removed by Ordinary Resolution of the Members of the Association; or
- 17.1.8 He/she files a petition for the surrender of his/her estate or an application for an administration order, or if he commits an act of insolvency as defined in the insolvency law for the time being in force, or if he makes any arrangement or composition with his creditors generally; or
- 17.1.9 He/she is otherwise removed in accordance with any provisions of this MOI; or
- 17.1.10 If he/she was appointed as a Director by the Developer, as contemplated in Article 16.12 above, and the Developer, for whichever reason, ceases to be the registered owner of Stand(s) or portion(s) or Land in Zwartkloof Private Game Reserve.

17.2 A Director elected by the Members shall hold office until the Annual General Meeting 2 (two) years from the Annual General Meeting at which his appointment to office was made, at which Annual General Meeting such Director shall retire, in accordance with Article 16.3 above, from office and will be eligible for re-election to the Board at such Annual General Meeting.

**18. REMUNERATION OF DIRECTORS AND MEMBERS OF BOARD COMMITTEES:**

- 18.1 Directors and members of Board Committees shall be entitled to be reimbursed all reasonable and *bona fide* expenses incurred by them during the performance of their duties as Directors and/or Chairman and/or Vice-Chairman and/or Treasurer and/or Company Secretary and/or Members of Board Committees, as the case may be.
- 18.2 Save as stated in Article 18.1, Directors and members of Board Committees are not entitled, but may be remunerated for their duties and/or service. Any such remuneration shall, be approved by means of Special Resolution by the Members of the Association in an Annual General Meeting.
- 18.3 Notwithstanding any provision to the contrary in this MOI or elsewhere, the Directors and members of Board Committees shall not be entitled to pension benefits, gratuities or allowances.

**19. FINANCIAL ASSISTANCE FOR DIRECTORS AND PRESCRIBED OFFICERS AND THEIR RELATED AND INTER-RELATED PARTIES:**

The Company shall not provide a loan to, secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a Director of the Company or of a related or inter-related company, or to a person related to any such Director.

**20. GENERAL POWERS AND DUTIES OF DIRECTORS, CHAIRMAN, VICE CHAIRMAN, TREASURER AND COMPANY SECRETARY:**

20.1 The Directors may:-

- 20.1.1 Establish and maintain any non-contributory or contributory pension, superannuation, provident and benefit funds for the benefit of pensions, gratuities and allowances and to make payments for or towards the insurance of any persons who is employees or ex-employees of the Association including indemnity insurance.
- 20.1.2 Establish and maintain any non-contributory or contributory benefit funds in respect of indemnity insurance for the Directors or ex-Directors only.
- 20.2 The Board shall be entitled to annually elect from its members a Chairman, a Vice- Chairman, Treasurer, Company Secretary and determine the period for which they are to hold office, provided that the offices of the Chairman, Vice-Chairman, Treasurer and Company Secretary shall *ipso facto* be vacated by the Director holding such office upon his/her ceasing to be a Director for any reason.
- 20.3 The Chairman shall preside at all Meetings of the Board and all Members' Meetings and shall perform all duties incidental to the office of the Chairman and such other duties as may be prescribed by the Board from time to time. In the event of an equality of votes, the Chairman shall have a second and/or casting vote.
- 20.4 The Vice-Chairman shall assume the powers and duties of the Chairman in the absence of the Chairman or his inability or refusal to act as Chairman, and failing the appointment of a Vice Chairman, a Director nominated by the majority of the remaining Directors of the Board shall perform such duties as may from time to time be assigned to him by the Chairman of the Board.
- 20.5 The Treasurer shall perform the functions applicable to a non-listed company without shareholding as prescribed in the Companies Act, Act No. 71 of 2008, as amended, Part C Sections 23 to 34. which is.
- 20.6 The Company Secretary shall perform the functions applicable to a non-listed company without shareholding as prescribed in the Companies Act, No 71 of 2008, as amended, Part B Section 88.
- 20.7 The Board may in its discretion from time to time for the purposes of the Association borrow or raise such sums of money from Members of the Association or from such other entity or reputable financial institutions and Commercial Banks as the Board may determine.
- 20.8 The Board shall have the right to vary, cancel or modify any of the Board's decisions and Resolutions from time to time.
- 20.9 The Board shall be entitled, but not obliged: -
- 20.9.1 To engage, on behalf of the Association, the services of accountants, auditors, attorneys, advocates, architects, engineers and/or any other profession; and
- 20.9.2 To engage, on behalf of the Association, Service Providers to fulfil the functions of, but not limited to Management, Administration, Operating, Maintenance, Safety and Security; and

20.9.3 To obtain opinions and/or other services from such persons relating to the business of the Association only; as and when the Board may deem necessary and/or required, and on such terms as the Board may decide; and

20.9.4 In the event that the Board engages such professional persons and/or Service Providers as aforesaid, the Association shall be liable for payment of such persons' and/or entities accounts.

20.10 The Board shall further have the power to uphold the purpose and main business and objectives of the Company.

20.11 Manage and run the business of the Company.

20.12 Unless specifically restricted and/or specified otherwise in this MOI, fulfil the functions and have the responsibilities, powers and accountabilities as prescribed and applicable in the following legislation, as amended:

20.12.1 Companies Act; Act 71 of 2008

20.12.2 Community Scheme Services Act; Act 9 of 2011

20.12.3 Sectional title Act; Act 95 of 1986; Sections 37 & 38 only\*

20.12.4 Sectional Title Scheme Management Act; Act 8 of 2011; Sections 3 & 4 only\*

\* Only applicable to the extent that it is not in conflict with the prescriptions in this MOI, as amended, and can reasonably be applied to a Home Owners Association (HOA) registered as a non-profit company (NPC).

## **21. BOARD COMMITTEES:**

21.1 The Directors may appoint any number of Board committees for any period, or once off for a specific purpose, and delegate to such committees any authority of the Board. The members of such committees may include persons who are not Directors, as long as they are not ineligible or disqualified to be Directors, who shall not be able to vote at Board Meetings.

21.2 No person shall be appointed as a member of a Board committee, if he/she is ineligible or disqualified and any such appointment shall be a nullity. A person who is ineligible or disqualified must not consent to be appointed as a member of a Board committee nor act as such a member. A person placed under probation by a Court must not serve as a member of a Board committee unless the order of Court so permits.

21.3 There are no general qualifications prescribed by the Association for a person to serve as a member of a Board committee in addition to the requirements of the Act.

21.4 A Member of a Board committee shall cease to hold office as such immediately he becomes ineligible or disqualified in terms of the Companies Act.

21.5 Committees of the Board may consult with or receive advice from any person, including professional persons. Insofar as may be permissible by the Act, the members of Board

Committees shall be entitled to vote at such committee Meetings on matters to be decided by such Committee.

21.6 Meetings and other proceedings of a committee of the Board consisting of more than 1 (one) Member shall be governed by the provisions of this MOI regulating the Meetings and proceedings of Directors.

**22. PERSONAL FINANCIAL INTERESTS OF DIRECTORS:**

22.1 For the purposes of this Article 22 (Personal Financial Interests of Directors), "Director" includes a Prescribed Officer and a person who is a Member of a committee of the Board, irrespective of whether or not the person is also a Member of the Board.

22.2 At any time, a Director may disclose any personal financial interest in advance, by delivering to the Board a notice in writing setting out the nature and extent of that personal financial interest, to be used generally by the Association until changed or withdrawn by further written notice from that Director.

22.3 If a Director has a personal financial interest in respect of a matter to be considered at a Meeting of the Board, or knows that a related person has a personal financial interest in the matter, the Director: -

22.3.1 Must disclose the personal financial interest and its general nature before the matter is considered at the Meeting; and

22.3.2 Must disclose to the Meeting any material information relating to the matter, and known to the Director; and

22.3.3 May disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors; and

22.3.4 If present at the Meeting, must leave the Meeting immediately after making any disclosure contemplated in Articles 22.3.2 or 22.3.3; and

22.3.5 Must not take part in the consideration of the matter, except to the extent contemplated in Articles 22.3.2 or 22.3.3; and

22.3.6 While absent from the Meeting in terms of this Article 22.3:

22.3.6.1 Is to be regarded as being present at the Meeting for the purpose of determining whether sufficient Directors are present to constitute a quorum; and

22.3.6.2 Is not to be regarded as being present at the Meeting for the purpose of determining whether a Resolution has sufficient support to be adopted; and

22.3.6.3 Must not execute any document on behalf of the Association in relation to the matter unless specifically requested or directed to do so by the Board.

- 22.4 If a Director acquires a personal financial interest in an agreement or other matter in which the Association has a material interest, or knows that a related person has acquired a personal financial interest in the matter, after the agreement or other matter has been approved by the Association, the Director must promptly disclose to the Board the nature and extent of that personal financial interest, and the material circumstances relating to the Director or related person's acquisition of that personal financial interest.
- 22.5 A decision by the Board, or a transaction or agreement approved by the Board is valid despite any personal financial interest of a Director or person related to the Director, only if: -
- 22.5.1 It was approved following the disclosure of the personal financial interest in the manner contemplated in this Article 22; or
- 22.5.2 Despite having been approved without disclosure of that personal financial interest, it has been ratified by an Ordinary Resolution by the Members following disclosure of that personal financial interest or so declared by a Court.

**23. PROCEEDINGS OF DIRECTORS:**

- 23.1 A Director authorised by the Board: -
- 23.1.1 May, at any time, summon a Meeting of the Directors; and
- 23.1.2 Must call a Meeting of the Directors if required to do so with at least 10 (ten) days' notice to Board-directors.
- 23.2 The Directors may determine what period of notice, being not less than 48 (forty-eight) hours, shall be given of Meetings of Directors and may determine the means of giving such notice, in writing, which may include telephone, facsimile or Electronic Communication. It shall be necessary to give notice of a Meeting of Directors to all Directors even those for the time being absent from South Africa.
- 23.3 If all of the Directors: -
- 23.3.1 Acknowledge actual receipt of the notice; or
- 23.3.2 Are present at a Meeting of the Directors; or
- 23.3.3 Waive notice of the Meeting, the Meeting may proceed even if the Association failed to give the required notice of that Meeting, or there was a defect in the giving of the notice.
- 23.4 The Directors may meet together for the despatch of business, adjourn and otherwise regulate their Meetings as they think fit provided that they shall meet, as a minimum, at least once every quarter. Unless otherwise resolved by the Board, all Board Meetings shall take place in Zwartkloof Private Game Reserve, or in the city or town agreed to by the Board Directors.
- 23.5 A Meeting of Directors may be conducted by Electronic Communication and/or one or more Directors may participate in a Meeting of Directors by Electronic Communication so long as the Electronic Communication facility employed ordinarily enables all persons participating in that

Meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the Meeting.

- 23.6 The quorum for a Directors' Meeting is a majority of the Directors personally present: Provided that, should a Director attend a Board Meeting through electronic communication, that Director shall be deemed to have been present at the Meeting for purposes of this Article 23.6. In addition, a Director who has authorised another Director, in writing, to attend a Meeting and vote thereat, on his or behalf, shall be deemed to be present himself.
- 23.7 The Chairman shall preside as such at all Meetings of the Board; Provided that should, at any Meeting of the Board, the Chairman not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such Meeting, provided further that should the Vice-Chairman also not be present within 15 (fifteen) minutes of the time appointed for the holding of such a Meeting, those Directors present shall appoint a Chairman from the Meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to that Meeting.
- 23.8 If within 30 (thirty) minutes from the time appointed for the holding of a Board Meeting a quorum is not present, the Meeting shall stand adjourned to the same day in the next week at the same place and time, or at such other place as the Chairman shall appoint, and if at such subsequent Meeting the subject to the adjournment, a quorum is not present within 30 (thirty) minutes from the time appointed for holding the Meeting, the Directors present shall be a quorum.
- 23.9 Each Director has 1 (one) vote on a matter before the Board and a simple majority of the votes cast on a Resolution is sufficient to approve that Resolution.
- 23.10 In the event of an equality of votes for and against any Resolution, the Chairman will have a second or casting vote.
- 23.11 The Association must keep minutes of the Meetings of the Board, and any of its committees, and include in the minutes: -
- 23.11.1 Any declaration given by notice or made by a Director as required by Article 22;
- 23.11.2 Every decision and Resolution adopted by the Board.
- 23.12 Resolutions adopted by the Board: -
- 23.12.1 Must be dated and sequentially numbered; and
- 23.12.2 Are effective as of the date of the Resolution, unless the Resolution states otherwise, subject to Article 23.13 below.
- 23.13 No Resolution shall be of any force or effect or shall be binding upon the Members of the Company unless such Resolution has been passed in terms of the powers of the Board.



- 23.14 Any minutes of a Meeting, or a Resolution, signed by the Chairman of the Meeting, or by the Chairman of the next Meeting of the Board, are/is evidence of the proceedings of that Meeting, or adoption of that Resolution, as the case may be.
- 23.15 A Resolution placed before, or submitted to, the Directors outside of a formal Board Meeting and signed by all Directors shall be valid in all respects as if it had been duly passed at a Meeting of the Board and shall form part of the records of the next Board Meeting.
- 23.16 A decision that could have been voted on at a Meeting of the Board may instead be adopted by written consent of a majority of the Directors, given in person or by electronic communication, such a decision to be referred to as a Round Robin Resolution of Directors.
- 23.17 A Round Robin Resolution of Directors shall be as valid and effectual as if it had been passed at a Meeting of the Directors duly called and constituted, provided that each Director in South Africa has received notice of the matter to be decided upon.
- 23.18 The Board of Directors may determine the period of time within which written consent or refusal must be provided and such a period of time should, as far as is practical, be included in the original notice.
- 23.19 The Round Robin Resolution shall as soon as is practical, after adoption or rejection, be noted and filed in the minute book of the Association.

**24. ALIENATION:**

- 24.1 No Member shall alienate a Stand or Portion or Land or rights thereto until the Board (under the hand of one of its members) on the Board's behalf, has certified that the Member has at date of transfer fulfilled all his financial and any other obligations to the Association in terms of this MOI.
- 24.2 No Stand or Portion or Land or any interest therein shall further be alienated without the consent of the Association, which consent shall not be unreasonably withheld –
- 24.2.1 Unless such Member is indebted to the Association in any way in respect of levy, special and/or additional contributions, fines or other penalties, interest or any other debt due which the Association may in terms of this MOI be entitled to claim from him; and
- 24.2.2 The proposed purchaser has agreed to bind himself, to the satisfaction of the Board as a contract to the benefit of the Association, to become a Member of the Association and the commitment thereto is registered on the title deeds of the Stand or Portion or Land.
- 24.3 Before a Stand or Portion or Land is transferred, the Member who has alienated such Stand or Portion or Land shall pay to the Association an administration fee for issuing a clearance certificate in respect of the proposed transfer as may be determined by the Board from time to time and alienation shall take place prior to or on the date specified in the clearance certificate.

24.4 Any registration of transfer of a Stand or Portion or Land into the name of the transferee shall *ipso facto* constitute the transfer of Membership to the transferee.

**25. LOSS OF DOCUMENTS:**

The Association shall not be responsible for the loss in transmission of any cheque, warrant, certificate or (without any limitation *eiusdem generis*) other document sent through the post either to the registered address of any Member or to any other address requested by the Member.

**26. NOTICES:**

26.1 The Association may give notices, documents, records or statements or notices of availability of the foregoing by personal delivery to the Member or by sending it prepaid through the post or by transmitting them via electronic communication.

26.2 Any Member who/which has furnished an electronic address to the Association, by doing so:

26.2.1 Authorises the Association to use electronic communication to give notices, documents, records or statements or notices of availability of the foregoing to him; and

26.2.2 Confirms that same can conveniently be printed by the Member within a reasonable time and at a reasonable cost.

26.3 Any notice required to be given by the Association to the Members, and not expressly prohibiting the provisions of this Article from applying, shall be sufficiently given (subject to giving a notice of availability in accordance with Articles 26.1 or 26.2), if given by posting it on the Association's web site until at least the date when the event to which the notice refers occurs.

26.4 Any notice, document, record or statement or notice of availability of the foregoing sent by the Association shall be deemed to have been delivered on the date and time determined in accordance with the Regulations.

26.5 A Member shall be bound by every notice delivered to the person who was, at the date on which that notice was delivered or established to the satisfaction of the Directors (as the case may be) as the Member, notwithstanding that the Member may then have been dead or may subsequently have died or have been or become otherwise incapable of acting as a Member.

26.6 The Association shall not be bound to use any method of giving notice, documents, records or statements or notices of availability of the foregoing, contemplated in the Regulations in respect of which provision is made for deemed delivery, but if the Association does use such a method, the notice, document, record or statement or notice of availability of the foregoing shall be deemed to be delivered on the day determined in accordance with the Regulations. In any other case, when a given number of days' notice or notice extending over any period is required to be given (which are not Business Days which shall be calculated in accordance with Article 1.3), the provisions of Article 1.3 shall also be applied.

26.7 As regards the signature of an electronic communication by a Member, it shall be in such form as the Directors may specify to demonstrate that the electronic communication is genuine, or failing any such specification by the Directors, it shall be constituted by the Member indicating in the electronic communication that it is the Member's intention to use the electronic communication as the medium to indicate the Member's approval of the information in, or the Member's signature of the document in or attached to, the electronic communication which contains the name of the Member sending it in the body of the electronic communication.

## **27. INDEMNITY:**

### 27.1 Indemnity of the Association:

27.1.1 Any and all persons (The Developer and Members/owners and its respective -family, -guests, -friends, -employees, -servants, -service providers, -contractors and alike) who enter Zwartkloof Private Game Reserve shall do so solely at its own risk.

27.1.2 The Developer, each and every Member or Owner individually shall indemnify and hold harmless the Association against any action by the Developer, Member or Owner, the Developers and Members or Owners family or any person within Zwartkloof Private Game Reserve at the invitation of or under the control of the Developer, Member or Owner concerned, whatsoever the nature of such claims and howsoever arising.

27.1.3 Any person using any of the Services and Facilities of and situated on Zwartkloof Private Game Reserve does so entirely at his own risk and no person shall have any claim against the Association of whatsoever nature arising from such use, nor for anything which may befall any person during the course of such use, whether caused by human or animal action or neglect, agent, natural phenomena, or otherwise.

27.1.4 The Developer, Members, Owners or any other person on the Zwartkloof Private Game Reserve at invitation of or under the control of the Developer, Member or Owner, being it directly or indirectly, shall NOT have any claim against the Association its Directors, Agents Service Providers, Contractors, Employees for injury and/or damage as a result of any action taken by the Association and/or failing to take action.

### 27.2 Indemnity of the Association's Directors:

27.2.1 For the purposes of this Article 27.1 "Director" includes a former Director, a Prescribe Officer, a person who is a member of a committee of the Board, irrespective of whether or not the person is also a member of the Board.

27.2.2 The Association may: -

27.2.2.1 Not directly or indirectly pay any fine that may be imposed on a Director, or on a Director of a related company, as a consequence of that Director having been convicted of an offence in terms of any national legislation, unless the conviction was based on strict liability;

27.2.2.2 Advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Association; and

27.2.2.3 Directly or indirectly indemnify a Director for;

27.2.2.3.1 Any liability, other than in respect of:

- a) Liability arising in terms of Section 77(3)(a), (b) or (c) of the Companies Act or from wilful misconduct or wilful trust on the part of the Director; or
- b) Fine contemplated in Article 27.2.2.1;

27.2.2.3.2 Any expenses contemplated in Article 27.2.2.2 irrespective of whether it has advanced those expenses, if the proceedings;

- a) Are abandoned or exculpate the Director; or
- b) In respect of any other liability for which the Association may indemnify the Director in terms of Article 27.2.2.3.1.

27.2.3 The Association may purchase insurance to protect: -

27.2.3.1 A Director against any liability or expenses contemplated in Article 27.2.2.2; and/or

27.2.3.2 The Association against any contingency including but not limited to the following expenses:

27.2.3.2.1 That the Association is permitted to advance in accordance with Article 27.2.2.2; or

27.2.3.2.2 For which the Association is permitted to indemnify a Director in accordance with Article 27.2.2.3.1 or 27.2.2.3.2.

27.2.4 The Association is entitled to claim restitution from a Director or of a related Company for any money paid directly or indirectly by the Association to or on behalf of that Director in any manner inconsistent with Section 75 of the Act.

## 28. **SPECIAL CONDITIONS:**

28.1 This MOI is intended to be in compliance with the Companies Act and Regulations, Act 71 of 2008 as amended. In the event of conflict between the provisions of this MOI and the Act, save for setting a higher standards or imposing sticker requirements, the provision of the Act and Regulations shall take precedence.

28.2 In the event of any conflict between this MOI and the approved Conditions of Establishment for the development of the Reserve, the provisions of the Conditions of Establishment shall take precedence.

28.3 Any written legal and binding Agreement, **the provisions of which shall be approved by special resolution before**, entered into by and between the Developer and the Zwartkloof Private Game Reserve HOA NPC, shall be deemed to be applicable, incorporated, be read in and form part of this MOI as if it is specifically stated, stipulated and contained in this MOI.

28.4 In the event of any conflict between this MOI the Memorandum of Agreement (MOA) entered into and between Zwartkloof Developments (Pty) Ltd and Zwartkloof Private Game Reserve Home Owners Association (governing, *inter alia*, the rights and obligations of the respective Parties as applicable to the Development and/or Reserve), as amended, the provisions of the Memorandum of Agreement will take preference.

20.5 In the event of any conflict between this MOI and the approved ZPGR HOA Code of Conduct (CoC) and/or rules, regulations and procedures the provisions of the approved Memorandum of Incorporation shall take precedence.

Herewith confirmation that proper process, as prescribed in the Companies Act and this Memorandum of Incorporation, was followed to communicate the proposed amendments to the ZPGR HOA Members and allow for proper consultation, consideration and approval before adopted by Special Resolution 2 ( with a unanimous vote in favour) at the ZPGR HOA Annual General Meeting (Members Meeting) of 19 October 2019 before incorporation.

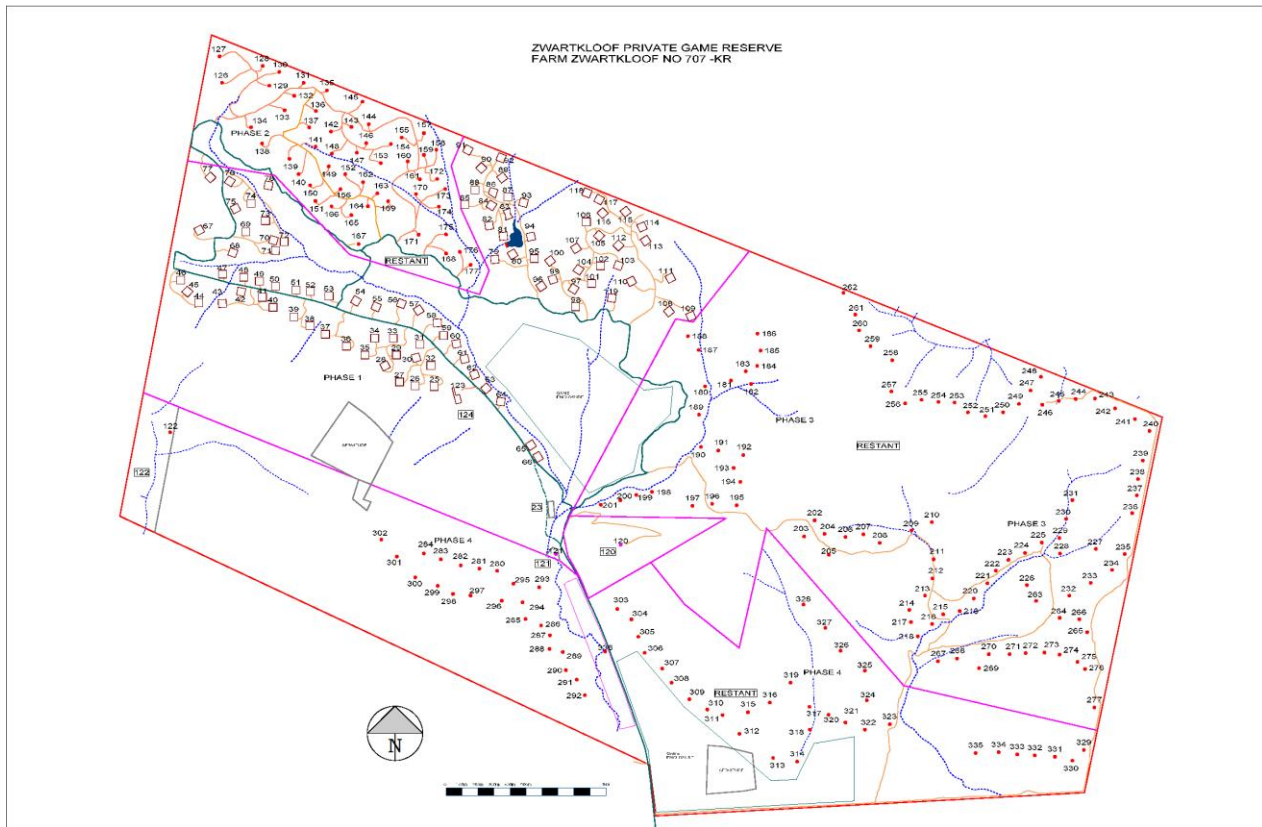
So, confirmed and certified at Pretoria on this 24 day of the month October 2019 by;

.....

Jacques J H Wildenboer: ZPGR HOA duly elected Director and appointed Company Secretary

.....

Johannes C van Zyl: ZPGR HOA duly elected Director and Chairman of the Board



LAND-USE TABLE					
ZONING	STAND/PORTION NUMBER	NO. OF STANDS/PORTIONS	AREA OF STANDS/PORTIONS		PERMITTED LAND-USE
			(Ha)	(%)	
Agricultural	25-119, 123 (Old mine compound) 126-177 180-277 324-329	252	63	3,1	Private lodges
Special	120 (Morgan lodge)	1	30	1,47	Corporate lodges
Special	121	1	0,5	0,03	Managers residence (existing farmstead)
Special	122	1	20	0,98	Bush-camp
Agricultural	124, (was 24) 178, (was 125) 278, (was 126) 337 (was "remainder")	4	1917,5	94,41	Communal property
		259	2031,0044	100	

**ZWARTKLOOF PRIVATE GAME RESERVE  
STANDS AND PHASES OF DEVELOPMENT**

Revised by Johan C van Zyl on 19 October 2019 Revision 02

**Full title private erven: 302** (251 Approved and 51 to be approved)

<b>Phase 1:</b>	<b>95* Erven Numbers 025 - 119</b> & com area 124-----	} The 169 Erven referred to in the Agreement between Zwartkloof Developments (Pty) Ltd and ZPGR HOA should refer to Phases 1 and 2 + 22 Erven of phase 3 and not Phases 1 and 2 only.
1A	54 Erven numbers 025 - 078	
1B	41 Erven numbers 079 - 119	
<b>Phase 2:</b>	<b>52* Erven Numbers 126 - 177</b> & Com area 178-----	
<b>Phase 3:</b>	<b>98* Erven Numbers 180 - 277</b> & Com area 278-----	
3A	22 Erven numbers 180 - 201	
3B	76 Erven numbers 202 - 277	} <b>252</b> As per "Land-use table"
<b>Phase 4:</b>	<b>57 Erven Numbers 280 - 336</b> & Com area 337-----	
4A	23 Erven numbers 280 - 302	
4B	21 erven numbers 303 - 323	
4C	06* Erven numbers 324 - 329-----	
4D	06 Erven numbers 330 - 335	
4E	01 erven number 336 (New tented camp?)	} <b>259 Approved Portions as per "Land-use table"</b> and Tribunal decision Ref. LH 12/4/11/2/1/15 (TR) and Conditions of Establishment Ref. LH 12/4/11/2/1 (15) DO (Refer to Approved "Land-use table" & "ZPGR Erven lay-out plan") <b>310</b> Portions including the 51 sub-divisions (Erven) in phase 4 which approval is subject to a geotechnical study and other provisions as may be prescribed by the Decision Tribunal.

**Other 4:** (See designation below)

Erven 123:	01* Erven with Old mine buildings on 1 Ha -----	} <b>3</b> "Special as per "Land use table"
Erven 122:	01* Erven for Bush camp on 20 Ha -----	
Erven 121:	01* Erven for Managers house on 0,5 Ha-----	
Erven 120:	01* Erven for Private lodge on 30 Ha-----	

**Communal property:** 4 Portions ±1917,5 Ha

Portion 124 being the remainder of Zwartkloof 707 KR Portion 24-----	} <b>4</b> Remaining portions. Owned by----- Zwartkloof Developments (Pty) Ltd with trans versing rights by all ZPGR Members
Portion 178 being the remainder of Zwartkloof 707 KR Portion 125--	
Portion 278 being the remainder of Zwartkloof 707 KR Portion 126--	
Portion 337 being the remainder of Zwartkloof 707 KR Portion-----	

"Stand/portion 23" (The old mining house in the Eskom yard area) is shown on the ZPGR General development plan, but not referenced in the "Conditions of establishment nor the Land use table"

Note/s:

1. To be used for information and reference purposes only.
2. To be read in conjunction with the Tribunal Decision LH12/4/1/11/2/15 (TR) and Conditions of establishment LH12/4/11/2/1(15) DO, parts 1 and 2
3. Numbers marked thus \* refer to approved Erven as per Tribunal decision and Conditions of Establishment.
4. Reference to sub-phases (A to B and A to E) was added for clarification purposes only and has no other purpose.
5. Compiled on 21 January 2019 in good faith from available ZPGR Establishment documents available.